IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 09.03.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Writ Appeal No.857 of 2000

The Executive Officer,
Idanganasalai Town Panchayat,
Sankari Taluk,
Salem District. ... Appellant/Respondent

vs.

1.K.Balasubramani

2.The District Collector,
(Director of District Panchayat)
Office of the Collectorate/Salem.
(2nd respondent impleaded as party
as per order of Court dt.1.11.2002
made in CMP No.13558/2001 by
CJ & CNJ) ... Respondents/Petitioner

Writ appeal filed under Clause 15 of the Letters patent against the order dated 16.3.2000 made in W.P.No.7221 of 1993.

For Appellant : Mr.M.Liagat Ali
For 1st Respondent : Mr.S.Ayyathurai

For 2nd respondent : Mr. E.Sampath Kumar
Government Advocate

JUDGMENT

(Order of the Court was made by P.SATHASIVAM, J.)

The above writ appeal has been filed against the order of the learned single Judge dated 16.3.2000 made in W.P.No.7221 of 1993, in and by which, the learned Judge quashed the termination order dated 24.7.1992 and directed the appellant-Town Panchayat to reinstate the writ petitioner with continuity of service, backwages and attendant benefits.

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2. The first respondent herein was appointed as Sweeper in the place of one P.Kandasamy by an order dated 30.01.1991. The appointment order, which is available in page 2 of the typed set filed by the first respondent shows that there was a vacancy in the post of Sweeper after retirement of the incumbent P.Kandasamy. It further shows that a list was called for from the Employment Exchange and the registration number of the first respondent/petitioner K.Balasubramani is No.2990/90 dated 22.8.1990 (furnished by the Employment Exchange) and after satisfaction, selected him and appointed as Sweeper. No doubt, the post is a temporary appointment in the time scale of Rs.750-12-870-14-940. In addition to the above information, it is also brought to our notice that the selection was made by a Selection Committee, which is also evident from the appointment order dated 30.01.1991.

3. While the first respondent was continuing his service, the appellant Town Panchayat issued a proceeding dated 24.7.1992 in and by which, the appointment of the first respondent was cancelled. A perusal of the said proceeding shows that four charges have been levelled against him. In such circumstances, if the Panchayat wants to proceed further, it ought to have issued a notice, afforded opportunity and after conducting the enquiry, they are free to take a decision. However, it is clear that having alleged certain charges against him, without following the procedure known to law, they have simply terminated him from service. This aspect was considered by the learned single Judge and after finding that the impugned order terminating the first respondent from service without holding an enquiry with due opportunity to rebut those charges, is against the principles of natural justice and also the decision of the Supreme Court, the learned single Judge quashed the same.

4. In the light of the reasoning of the learned single Judge, we verified the appointment order of the first respondent, the charges levelled against him in the proceedings dated 24.7.1992 as well as the order of the learned single Judge dated 16.3.2000. As rightly pointed out by the learned counsel for the first respondent, though the appointment order shows that the first respondent was appointed temporarily, as pointed out earlier, his selection was for a vacant post that was caused due to the retirement of one Kandasamy and that too, the selection was made by the Selection Committee. In such circumstances, though the Town Panchayat is free to take action for any violation, undoubtedly, they are bound to follow the procedure established by law. We are in agreement with the conclusion of the learned single Judge inasmuch as the first respondent herein was not afforded an opportunity to put forth his defence with reference to the charges levelled against him in the termination order dated 24.7.1992.

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5. In the light of what is stated above, we do not find any valid ground for interference. Consequently, the writ appeal fails and the same is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1. The District Collector,
(Director of District Panchayat)
Office of the Collectorate/Salem.

2. The Executive Officer,
Idanganasalai Town Panchayat,
Sankari Taluk,
Salem District.
+ 1 CC to Mr. M. Liagat Ali, Advocate SR NO 11702

+ 1 CC to the Government Pleader SR NO 11751

+ 1 CC to Mr. S.Ayyuathurai, Advocate SR NO 11619

W.A.No.857 of 2000
09.03.2006.

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